

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RICHARD ZELMA,

Plaintiff,

Vs.

Case No.: 2:18-cv-14655-KM-SCM

**AUDINA HEARING INSTRUMENTS,
INC., HEAR BETTER FOR LIFE,
HEARING BETTER FOR LIFE, L. L. C.,
JOHN MONACO, Individually,
SARAH R. LOVE TRAURING, Individually,
VISROEL [ISREAL SRULY] MAX, Individually,
And MAXSIP TELECOM CORP, ET AL.**

Defendants.

**AUDINA HEARING INSTRUMENTS, INC.
Cross-Complainant,**

Vs.

**HEAR BETTER FOR LIFE, LLC and
JOHN MONACO,
An Individual,**

Cross-Defendants.

**MOTION TO DISMISS CROSS-CLAIM FILED BY DEFENDANTS MAX & MAXSIP
TELECOM CORP.**

COMES NOW, Robert W. Rasch, Esq. of the law firm of Robert W. Rasch, PA, on behalf of Audina Hearing Instruments, Inc. (hereinafter “Audina”) files this Motion to Dismiss the Cross-Claim for Indemnification filed by Defendants Max & Maxsip pursuant to Rule 12 (b)(6) of the *Federal Rules of Civil Procedure* for failure to state a cause of action, and states:

1. In Paragraph 2 of the Cross-Claim for Indemnification, Defendants Max & Maxsip allege that they are entitled to indemnification from the co-Defendants, without identifying which co-defendants. Defendants Max and Maxsip give no legal basis for such allegation, and to the extent that the allegation is that the indemnification was as a result of some written agreement which was not attached to the Cross-Claim, such claim must be dismissed.
2. In Paragraph 3 of the Cross-Claim for Indemnification, Defendants Max & Maxsip allege that they entered into a contract with Hear Better for Life and thus are entitled to indemnity for any liability from the actions of Hear Better for Life, but have not attached any written indemnification agreement.

3. Yet, in the WHEREFORE language, Max & Maxsip assert entitlement to judgment only against Defendants Hear Better for Life, John Monaco and Sarah R. Love Trauring.
 4. As Defendants Max & Maxsip have asserted inconsistent allegations as to which Co-Defendants they are alleging this Cross-Claim for Indemnification, Defendant Audina respectfully requests this Court to grant this Motion to Dismiss as to Defendant Audina Hearing Instruments, Inc.
- Submitted this 30th day of October, 2020.

/s/ Robert W. Rasch

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CERTIFICATE OF SERVICE

A copy of this Motion to Dismiss has this day been filed in the Court's file and an electronic copy has been sent to all parties and counsel of record.

/s/ Robert W. Rasch

Robert W. Rasch, Esq.